

General Information Letter: Military retirement pay is not subject to Illinois income tax.

September 20, 1999

Dear:

This is in response to your letter dated July 27, 1999 in which you requested information concerning the Illinois income taxation of military retirement pay, including military disability retirement pay. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated:

Our Association maintains a file of general information concerning the treatment of military retired pay (and the pay of uniformed personnel of xxxxxxxxxxxxxxxxxxxxxxxx as well as the xxxxxxxx xxxxxxxx and xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx) for income tax purposes by federal, state and local tax authorities. In addition, we publish an annual Income Tax article (1997 edition attached) which is sent to our 400,000 members. In this respect, would you please furnish the information (and excerpts from applicable state tax laws' statutes) indicated in the following questions:

1. Is military pay subject to your state income tax regardless of the reason for which a service member was retired?

2. If so, what special exemptions, if any, are granted?

3. A person who is retired for military disability (as distinguished from non-disability retirement based on length of service) and has military pay based on percentage of disability must meet the following conditions for federal income tax exemption: (a) On or before September 24, 1995, the member was entitled to receive retired pay computed on the basis of percentage of disability; or, (b) On September 24, 1975, he or she was a member of the armed forces (or Reserve component thereof) or under a binding written commitment to become such a member; or, (c) The member receives disability retired pay because combat-related injury. The term combat-related injury or sickness means personal injury or sickness incurred as a direct result of armed conflict, or while engaged in extra hazardous service, or under conditions simulating war. (these conditions are codified in 26 U.S. Code, Section 104.) For people covered under a, b or c above, the tax exemption rules are further clarified as follows: (1) If military

retired pay is based on the percentage or degree of disability or is paid under disability retirement laws in effect before October 1, 1949, the entire amount is exempt from income tax; (2) Where gross military retired pay is based on years of service (2.5 percent for each year), the amount payable solely on percentage of disability is tax exempt. The excess, as reported on Form 1099-R, is taxable income. For persons not covered by the previously specified eligibility criteria--that is, primarily persons who became members of the armed forces after September 24, 1975, and who do not receive disability retired pay because of a combat-related injury or who are not eligible for disability compensation administered by the Department of Veterans Affairs--amounts received as disability retired pay are fully subject to taxation. Is any portion of military disability retired pay exempt from state tax, such as on Federal returns?

4. If so, what specific exemptions, if any, are granted?

Previous information we have received from your state is reflected in the attached article under the heading "State Income Tax Information on Military Retired Pay." The purpose of this correspondence is to validate or update your state's data as contained therein.

DISCUSSION

With respect to the Illinois Income Tax, Section 203 (a)(2)(F) of the Illinois Income Tax Act provides a subtraction modification from adjusted gross income for distributions received from any retirement or disability plan for employees of any governmental agency if the distributions were included in the computation of federal adjusted gross income. Therefore, military retired pay and military disability retired pay is not subject to Illinois income taxation. If any military retired pay or military disability retired pay is included in federal adjusted gross income, it can be subtracted on the Illinois return (See IITA Section 203(a)(2)(F), copy enclosed). If any military retired pay or military disability retired pay is not included in federal adjusted gross income, it would not be subject to Illinois income tax because the starting point in determining base income for purposes of estimating liability for the Illinois income tax begins with one's federal adjusted gross income. There is no requirement that such pay be added back on the Illinois return.

The information concerning Illinois in your article "State Income Tax Information on Military Retired Pay" is correct.

Please feel free to correspond with me further if I may be of additional assistance.

Sincerely,

Charles E. Matoesian
Associate Counsel - Income Tax